Hate crime and Institutional Racism Shadow Report 2014-2018: Research Brief on Italy

This Research Briefing has been prepared by Michela Semprebon (UNESCO Chair SSIIM of the University IUAV of Venice). The data included are based on research undertaken in Italy, in collaboration with ENAR (European Network Against Racism), for the 2014-2018 ENAR Shadow Report on Hate Crime and Institutional Racism in Europe. A full version of the Report is available at: https://www.enar-eu.org/Shadow-Reports-on-racism-in-Europe. The data was collected through a questionnaire, developed by ENAR and completed by researchers, based on national research (over 239 interviews with police, prosecution, judiciary, civil society organisations, and desk-research). The Briefing includes a summary of the analysis of Italian policies and practices related to the recording, investigation and prosecution of hate crimes with a racial bias; a list of recommendations specific to Italy; and final remarks, based on the findings.

Recommendations for Italy

Drawing from the opinions of the experts interviewed in Italy, the following recommendations can be put forward:

- improve the system of data collection on hate crimes, with disaggregated data on bias motivations and information on the victims;
- promote greater collaboration among the police and civil society associations as far as the collection of data and the reporting of crimes are concerned;
- reform the current legislation to allow third party reporting;
- reform the current legislation to allow for the inclusion of indicators that go beyond currently protected grounds;
- include protected grounds that are not included in the Mancino and subsequent laws (ie. gender and sexual orientation);
- continue to provide regular training to police forces, but also to the judiciary and lawyers, to improve skills on identifying and recording hate crimes as well as on how to collaborate with victims;
- strongly condemn hate speech, particularly by political and institutional representatives, and take effective measures to encourage them, as well as media professionals, to avoid hate speech;
- allocate resources to information campaigns for citizens on how to report hate crime and to socio-cultural initiatives to prevent hate crime in the first place;
- support legal debates on effective measures to fight hate speech (civil versus criminal proceedings, restorative justice approaches, etc.);
- establish an independent equality body to support victims of discrimination and hate crime;
- promote the development of a decentralised system to improve the recording and investigation of hate crimes (i.e. identification of decentralised experts for local police stations and Public Prosecutor's offices).

Focus on Italy[1]

Under-reporting and mistrust of the police

Individuals with a migration status fear being asked for their paperwork or worry that reporting the crime would impact on the outcome of their immigration case. The reluctance of police officers to recognise and record hate crimes also contributes to the low number of officially recorded racially motivated crimes.

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[1] Only some of these data are reported in the 2014-2018 ENAR Shadow Report, as relevant for comparison with other EU Member States

In Italy, various reports[2] suggest that under-reporting can also be associated with a lack of trust and/or fear of police forces. Interviewees highlighted how some police officers have been themselves perpetrators of racist crimes (see Lunaria 2009 and Cronache di ordinario razzismo News Archive: Nov. 2014, Jun. - Aug. 2017, Jun. - Aug. 2018) and racial profiling - no case could be retrieved for the latter, but activists confirm it is a widespread practice.

Other factors contribute to under-reporting: the limited number of cases in which hate speech/crime have been sanctioned; the fact that "third party reporting" and anonymous on-line reporting[3] are not allowed by the Italian legislation; lack of an adequate institutional/non-institutional system granting effective legal, social and psychological support to victims; insufficient understanding of the legislative framework and readiness to support victims in criminal proceedings among civil society organisations; scarce awareness and knowledge of their rights on the side of victims, as well as feelings of humiliation and shame for having been victimised and (to some extent) linguistic and cultural barriers and lack of "reporting culture" (particularly for some communities, such as Muslims).

It should be noted that a specific fund was introduced in 2014 to financially support victims of discrimination who were willing to report a crime. The fund is managed by UNAR, the Italian equality body, together with the National Forensic Council. While this instrument could provide an effective tool to victims, to the researcher's knowledge, it has barely been used to date.

Institutional responses to racially motivated crime

Collaboration with civil society

In several Member States there are informal and formal mechanisms of cooperation between civil society organisations and the police or government departments, as far as the reporting of hate crimes is concerned. In Italy, OSCAD, the Observatory for Security against Acts of Discrimination, receives notifications of hate crimes from individuals but also from other stakeholders including first and foremost Lunaria (an anti-racist civil society organisation), the equality body UNAR, NGOs and associations (such as ASGI, religious associations, etc.). Many interviewees insisted that there is still too little cooperation between police forces and civil society organisations – unlike in the UK where police forces have signed a memorandum with some NGOs (Hatemeter 2018). As stressed in the Together Project Report (2015), lack of cooperation is largely based on an underlying cultural problem: on the one side police forces (and in particular local police stations) are reluctant to act in the face of a racist act and/or a hate crime; on the other they generally do not consider anti-racism organisations as trustworthy collaboration partners.

Police recording of hate crimes

Correct recording of a hate crime is a crucial step in the process of effectively investigating hate crimes and it helps to ensure that the legislation is implemented. As stated in the EU guidance note on the practical application of the Council Framework Decision 2008/913/ JHA, prompt and effective investigation and prosecution of hate crimes depends on the ability of police officers to identify and record incidents as potential hate crime offences in the case file.

In Italy there are no specific provisions to support police officers in recording hate crimes with a racial bias. Police officers record potential hate crimes like any other crimes. Crimes committed on other discriminatory grounds than those explicitly specified in the Mancino Law (that is to say ethnic and religious bias motivations) are recorded as ordinary (non-hate crime) offences (FRA 2018).

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[2] Among others see: Carta di Roma 2018; Hatemeter 2018; PRIMS 2015; Together 2015; UNICRI 2014
[3] Although internationally acknowledged as more effective tools, as reported by OSCE-ODHIR (2009), with specific reference to hate speech.

The Shadow Report presents a practice development in Malta. While the country does not have a policy that supports the police in recording a hate crime with a racial bias, the system to record hate crimes was recently (2018) changed. Now, when a victim reports a crime, the police uses one generic form in which the kind of crime is specified. Since the reform, the system automatically asks whether it is a 'hate-related offence' (yes/no) and if the answer is 'yes' a drop-down menu appears to choose the bias. This makes the flagging and recording of bias motivation considerably more straightforward. However, as pointed out by interviewees in Italy, it is rather the training of police forces to identify a hate crime and ask "the right" questions that helps effectively identify the "hate" element. Interviewees were in fact skeptical about the effectiveness of revising recording forms with specific form/drop-down menus.

According to interviewees, recording is often ineffective due to structural factors, such as lack of sufficient training of police officers on hate crimes (although some training has been undertaken[4]) and absence of expert support in local police stations[5] (see also Together 2015). Some interviewees recalled a few cases of police mishandling of hate crimes, associated particularly with the fact that the aggravating "hate" element was not indicated in the police report. Furthermore, there seems to be no understanding of the (potential) intersectional dimension (multiple bias such as gender, sexual orientation, etc.) of hate crimes. The ENAR Shadow Report suggests that understanding of this dimension is at a developmental stage in many police authorities, but also as far as researchers, civil society organisations and criminal justice institutions are concerned.

As a result of the limited knowledge of police forces, victims are not always supported in identifying/ pointing out the aggravating "hate" element of the reported crime and hate crimes are thus less likely to be investigated and eventually prosecuted.

Police investigations
Several structural obstacles have emerged concerning investigations of hate crimes in Italy. First, technical and bureaucratic obstacles were reported, particularly to investigate hate speech (with an aggravating element), such as the need to obtain permissions for post-preliminary investigations (i.e. on social network providers)[6]. Second, interviewees stressed the lack of training for investigators (see also Together 2015). It must not be underestimated that, to date, low priority is (often) given to the investigation of hate crimes and that the declarations of the author/s of a crime have been repeatedly mis-handled by the press[7] and investigators alike: on several occasions, details on reported (or even not yet reported) hate crimes were spread (particularly by local media) immediately after the actual crime. Although such details may have

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[4] Various trainings have been organised in recent years (Feb. 2014 by OSCAD and ODHIR, project TAHCLE; Jul. 2014 by OSCAD; Dec. 2014 and 2015 by OSCAD and the Council of Europe). More trainings are being planned. A "Protocol on the effective investigation/prosecution of hate crimes" was also created for the countries (including also Italy) involved in the project "Experience Crime", targeted at police recruits.

[5] OSCAD is available but does not have the capacity to reach out to all police stations that in turn may not always call OSCAD for support.

[6] These difficulties include: the slowness of the Italian judicial system and its heavy workload; the fact that social networks are normally managed by private companies based in the US and often resistant to providing information; the legislation in some countries (such as US) is very protective of freedom of speech; the legal address of the provider can be outside Italy, thus making it impossible to initiate a legal action (PRISM 2015); the responsibility can be associated to different actors with different functions (server, publisher, diffusion, creation of the content).

[7] Trainings for journalists have been undertaken by COSPE and Carta di Roma, as well as other civil society organisations.

proved unfounded and were then corrected by the media, the details eventually had an impact on investigations (as in the case of Fermo[8] and Macerata[9]).

At least half of EU Member States have operational guidelines for recording or investigating hate crimes with a racial bias, but implementation remains limited. In fact, frontline officers are often unaware of the proper process outlined in the operational guidelines (if available at all). Yet, the lack of recording and poor investigation are crucial factors when trying to establish the racial element of a crime.

In the Italian legal system instruments such as guidelines are generally not used, as compared to the UK for example. However, there is a recent example of a (local) Directive in the city of Turin. In July 2018, the then Public Prosecutor Armando Spataro issued a Directive including indications (rather than guidelines in the strict sense) for investigations. The Directive was issued following an increasing number of crimes with an ethnic-religious bias motivation in the provincial territory of Turin. The Directive provides criteria to ensure the "*correct and punctual and uniform exercise of the penal proceeding with reference to hate crimes*" (Directive, Prot. N. 2851/2018). It provides indications to improve the speed of investigations, to give priority to tackling hate crimes and to avoid the (frequent) early archiving of cases.

The Shadow Report presents a good practice with reference to training in Cyprus: the re-opened Cyprus Police Academy has employed several external lecturers to train on human rights and non-discrimination and the Office for Combatting Discrimination of the Police offers in-house trainings alone or in conjunction with the Ombudsperson – although more resources would be needed.

Further reflections on investigations were provided by interviewees. In particular, investigators can fail to identify the aggravating "hate" element and to specify it in indictments. In such cases the element itself can only be raised by the defence lawyer, during the criminal proceeding, and this often means having to start a new proceeding – with resulting delays and costs.

In addition, as far as hate speech is concerned, there is no definition in the Italian legislative system. A definition is strongly needed, including not only reference to ethnic and religious bias motivations – as in the Mancino Law – but also bias motivations associated with gender, disability and sexual orientation. This would contribute to having an intersectional approach.

Prosecution
Generally speaking, there seems to be an agreement among the experts interviewed in Italy that the current legislative framework can ensure an adequate prosecution and sentencing of hate crimes with a racial bias.

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[8] July 2016, Fermo. A couple of Nigerian origins was walking in the city centre of Fermo. Not far away, two men were waiting for the bus and one of the two yelled to the woman: "African Monkey" and other insults. Her husband reacted. A fight started. He was beaten to death. The main author of the crime, affiliated with a far right group, was arrested on charges of manslaughter, aggravated by racist motives, but after that, for months, the lawyer of the main author of the crime, together with a part of the local and national media, supported the thesis of legitimate defence. In January 2017 the man agreed to a reduced sentence of 4 years before the judge for the preliminary investigation of Fermo. The house arrest was revoked. A study on online hate speech (Hatemeter 2018), following the murder in Fermo, found that there were just a few significant negative tweets on the crime, but these increased when mainstream media acted as an echo-chamber to the hashtag 'io sto con Amedeo' ('I support Amedeo' - the murderer). It is questionable whether this actually impacted also on the legal proceedings.

[9] February 2018, Macerata. A young Italian man shot five young men and a young woman, all of African origins[9]. This case exemplifies a number of critical issues concerning prosecutions, as indicated in the article cited in note 25 and as commented by a few interviewees. Immediately after the crime was committed, the media "scaled it back" to an ordinary (non-hate) crime committed by an individual (with no specific affiliation) and the then on-going electoral campaign contributed to this. Yet there were evident elements of "hate" towards migrants: when he was stopped by the police he had an Italian flag around his shoulders and was greeting with the fascist salute. Other elements emerged of his affiliation with extreme right movements. As for the victims, their privacy was violated: their names and a few other personal details were provided by the media, thus putting them under risk. On 3 October, the media reported the author of the crime was sentenced to 12 years in prison, and this included a penalty associated with the aggravating hate element.

There are a few examples of good practices concerning prosecution. First, a special unit was established within the Public Prosecutor's Office in Turin, in 2015. The so-called "Gruppo 9" deals with political crimes and terrorism, as well as hate crimes. Its scope is that of discussing issues specific to these types of crimes and to develop a specific competence. It is a unique case in Italy.

Second, in December 2017, the then Ministry for Justice, Orlando, signed a decree relating to the creation of a permanent consultation body for the fight against hate crime and speech (OSCE-ODHIR 2018). However, this body has not started operating[10].

In spite of the above, the experts identified the limitations of compartmentalised organisation of police and prosecution, the lack of clear definitions of hate crimes with a racial bias and the lack of training for prosecution as leading causes for inadequate investigations and poor recording by the police. A pilot training has recently been organised in collaboration with COSPE to tackle these issues.

Looking at practices, interviewees confirmed that a very limited number of criminal proceedings on the basis of the Mancino Law have been processed since 2015. At the same time, an increasing use of the civil law has been made, as it is considered more effective (less costly and quicker). In particular, the instrument of "molestie" (harassment), included in anti-discriminatory laws, has been increasingly used. Its field of application is more restricted but it includes race and ethnicity and it allows to sanction on a civil and criminal basis as well (Lawyer A. Guariso, cited PRISM 2015).

With regard to sentencing, there is an ambiguous translation of the term "bias motivation" in Italian, which is generally translated as "prejudice" - which differs from "discrimination" - thus possibly confusing the terms of argumentations. According to a researcher interviewed, it might be useful to introduce language forensic experts to support judges in language analysis - following the British example.

With specific reference to hate speech, the aggravating element of "hate" has been scarcely applied to prosecutions, because of the difficulty to strike a balance between condemning hate crimes and ensuring freedom of speech. In this context, Guariso (cited in PRISM 2015) suggests that a recent sentence of the Court of Cassation (n. 34713/2016) could provide some "guidance". The sentence states that the Mancino Law is not in contrast with the rights of freedom stated in the Italian Constitution and in the European Convention of Human Rights, and that as such rights are not the object of unconditional and unlimited protection, but face limits constituted by the respect for other fundamental rights.

With further specific reference to hate speech by MPs and politicians, a crucial obstacle concerns the fact they benefit from immunity, as far as their parliamentary activity is concerned. This is a very critical aspect of the fight against hate crime and hate speech in Italy, particularly in light of increasing hate speech by politicians.

The "Stormfront case" is an example of the problems linked to sentencing of hate speech specifically[11]: the website could not be shut down because members had used anonymous proxies hosted in other countries. This clearly points to the difficulties associated with "containing the geographical boundaries of internet" (see Lunaria 2014 and Tribunal of Rome. Sentence N. 884113, Judgment of 8 April 2013). Similar issues have

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[10] Author. 2017. 'Odio online: Orlando istituisce Consulta permanente per contrasto'. *Eco dai Palazzi*, 14 December.
[11] In the Stormfront.org case, many reports were forwarded to UNAR and the Postal Police regarding the actual website. Many investigations were undertaken and a number of times the request was put forward to shut down the website (which was never done). In November 2012, following an injunction from the judicial authority in charge, the website was eventually shut down. One year later, it emerged that the forum was still online and active for Italian users. The website evolved from operating exclusively online to creating an operational structure aimed at spreading racist hatred online, including also violent responses. This was indicated in the sentence, which lead to the conviction of four people, as Stormfront became a brand to flaunt in racist far-right circles and the web became the place where actions were announced and gatherings organised (Tribunal of Rome. Sentence N. 884113, Judgment of 8 April 2013)

been discussed by the Commission on intolerance, xenophobia, phenomena of hatred "Joe Cox" (Commissione sull'intolleranza, la xenophobia, il razzismo e i fenomeni di odio "Joe Cox") that was established in 2016 within the Chamber of Deputies[12].

Final remarks

There have been some developments in the fight against hate crime in Italy between 2014-2018. First, article 604 ter of the Italian Criminal Code (Legislative Decree 1 March 2018, n.21 - riserva di codice in materia penale) sets out a general aggravating circumstance for any offence punishable with a penalty other than life imprisonment, if it is committed with discriminatory purposes, with ethnic, national, racial or religious hatred purposes or with a view to facilitating the activities of organisations, associations, movements or groups pursuing these purposes. Yet, according to interviewees these are formal rather than substantial changes - similar to other special laws, the Mancini Law has been transposed to the Criminal Code, but with no actual change to its content. Second, the Law of 16 June 2016, n. 115 introduced the crime of (holocaust) denial, in line with the EU Framework Decision on Racist and Xenophobic Crime, adopted in 2008. Third, the Council of Ministers adopted the Law proposal N. 3084, aiming to ratify the additional Protocol to the Convention of the Council of Europe on Cybercrime concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems. Later in May 2016, the Joe Cox Commission agreed on a Code of conduct with Facebook, Twitter, Microsoft and Google[13]. Fourth, the Law of 29 May 2017, n. 71 "Disposizioni a tutela dei minori per la prevenzione ed il contrasto del fenomeno del cyberbullismo" (Provisions for the protection of minors for the prevention of and fight against the phenomenon of cyberbullying) was adopted. It can be applied in cases of incitement to hatred online towards single individuals, on various protected grounds. Fifth, in December 2016, Usigrai (the trade union of RAI journalists) subscribed an agreement with trade unions aimed at fighting hate speech, by also sharing a formal declaration of the Association Carta di Roma according to which the role and mission of the public service is incompatible with hate speech (Carta di Roma 2017).

In spite of the above, there are still multiple structural and institutional obstacles that prevent the police and other professionals in the criminal justice system from correctly recording, investigating and prosecuting hate crimes, including: inadequate training, limited resources, lack of translators and specialists with cultural competences, and lack of diversity in the police.

Subtle forms of racism have emerged in the criminal justice system, although they are not easily detected, from the moment a victim reports a racially motivated crime to the police, through to investigation and prosecution. **This leads to a 'justice gap'**: a significant number of hate crime cases end up being dropped as a hate crime. Additionally, systematic failures in the treatment, practice and policies equate to a form of structural violence for racial minority groups. As highlighted in the Shadow Report, **further work is needed at institutional level to ensure a full review and improvement of the practice, policies and procedures that disadvantage certain groups**.

References

Carta di Roma. 2018. 'Notizie di Chiusura. Report 2018'.

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[12] It included one member from each parliamentary group, representatives of supranational organisations, research institutes, associations and experts. It was created as a result of the initiative promoted by the Council of Europe, which brought together in an "Alliance against hatred" MPs from 47 countries, attributing to the Hon. Santerini (Democracy Solidarity – Democratic Centre) the mandate of Rapporteur General on Racism and Intolerance, with the task of coordinating the work of the network of parliamentarians. In 2016, some legislative proposals were presented by the Commission, providing for an extension of punishable hate speech. At the same time, the proposal provided measures aimed at preventing hate speech, through training and education.

[13] Session n. 7 of the Joe Cox Commission (Chamber of Deputies), 2 February 2017. Available at : http://www.camera.it/application/xmanager/projects/leg17/attachments/commissione_intolleranza_resoconti/resocontos/000/000/010/resoconto_2_feb_2017_def.pdf, accessed 8 September 2018.

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